RECENT CASES.

AGENCY — NATURE AND INCIDENTS OF RELATION — KNOWLEDGE OF AGENT: WHEN IMPUTED TO PRINCIPAL. — The president of a bank secured by fraud a promissory note from the maker, which he indorsed for value to the bank, acting both as indorser and as agent for the bank. The bank sues the maker, who claims that the bank was affected, through its agent, with notice of the fraud. *Held*, that the bank may not recover. *First Nat. Bank* v. *Burns*, 103 N. E. 93 (Ohio).

To the general rule that the knowledge of the agent within the scope of employment is the knowledge of the principal, an exception is made where it would be against the agent's interest to communicate such knowledge. *Frenkel* v. *Hudson*, 82 Ala. 158; *Innerarity* v. *Merchants' National Bank*, 139 Mass. 332. See MECHEM, AGENCY, § 723. The theory is that the general rule rests on the presumption that the agent has communicated his knowledge to the principal; it does therefore not apply where it is clear that the agent will not in fact inform the principal. See *Wickersham* v. *Chicago Zinc Co.*, 18 Kan. 481, 486. Another ground for the general rule is the identification of principal and agent. See *Mountford* v. *Scott*, 3 Madd. 34, 40; *Houseman* v. *Girard Building Ass'n*, 81 Pa. St. 256, 262. On this view there is no basis for such an exception, for knowledge would be implied in all cases. Each theory seems but a fictitious explanation of a rule of policy, that one who deals through agents is bound by notice that they have acquired. It seems fair, on this basis, to make an exception where the agent is acting for his own adverse interests. The principal case denies any such exception. The court, however, makes the distinction that where the agent is the sole party in the transaction, his knowledge will be imputed to the principal, in spite of his adverse interest. *Newell* v. *Hadley*, 206 Mass. 335, 92 N. E. 507. *Contra*, *National Bank of Nephi* v. *Foote*, 12 Utah 157, 42 Pac. 205. As a sub-exception, this distinction seems to be based on a sound policy, that a principal should not be regarded as a purchaser without notice, when he must rely on the act of the very agent who knew. The result may further be supported on the theory that the agent has really confederated in a tort on the defendant, and that the principal cannot claim the benefit of the wrongful act without accepting the responsibility for it as well. The principal case therefore reaches a correct result, it is submitted.

BANKRUPTCY — PREFERENCES — STATUTES REQUIRING RECORDING OF TRANSFERS. — More than four months before bankruptcy an insolvent transferred property to the appellant, which the latter could reasonably have known would result in a preference. The transfer was by deed, which was recorded less than four months before the filing of the petition. By the law of Ohio the unrecorded deed was valid except as to subsequent purchasers in good faith. The trustee in bankruptcy now seeks to avoid the transfer as a preference. *Held*, that the deed may be set aside. *Carey* v. *Donohue*, 31 Am. B. Rep. 210 (C. C. A., 6th Circ.).

Section 60, a, of the National Bankruptcy Law provides that "where a preference consists of a transfer, such period of four months shall not expire until four months after the date of recording or registering of the transfer, if by law such recording or registering is required." This provision was added in 1903 for the purpose of changing the rule by which the date of such a preferential transfer was held to take effect from delivery of the deed. See COLLIER ON BANKRUPTCY, 8 ed., 654. Such a rule made it possible for a creditor to conceal his preference for the four months and record his deed just before bankruptcy. Unlike § 3, b,